

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MARY JO PULLEN-HUGHES,)	No. 3:11-cv-01271-PK
)	
Plaintiff,)	
)	
v.)	OPINION AND ORDER ADOPTING
)	FINDINGS AND RECOMMENDATION
CITY OF PORTLAND, et al.,)	
)	
Defendants.)	
_____)	

SIMON, District Judge.

Magistrate Judge Paul Papak filed Findings and Recommendation in the above-captioned case on October 2, 2012. Dkt. 107. Judge Papak recommended that Defendants Elizabeth Eames and Jenna Plank's Motion to Dismiss (Dkt. 74) be granted,¹ that Defendants Jospeh Luiz and David Woboril's Motion to Dismiss (Dkt. 77) be granted, and that Luiz and Woboril's alternative motion for summary judgment (Dkt. 77) be denied as moot. No party has filed objections.

¹ At oral argument on these motions, Judge Papak granted Plaintiff Mary Jo Pullen-Hughes' unopposed oral motion to dismiss Defendant Eames with prejudice. Dkt. 94. Thus, Judge Papak's recommendation regarding this motion relates solely to Defendant Plank.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe a standard of review. In such cases, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Papak’s findings and recommendation for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Papak’s Findings and Recommendation (Dkt. 107) are ADOPTED. Defendants Eames and Plank’s motion to dismiss (Dkt. 74) is GRANTED, and Defendants Luiz and Woboril’s motion

to dismiss (Dkt. 77) is GRANTED; Defendants Luiz and Woboril's alternative motion for summary judgment (Dkt. 77) is DENIED AS MOOT.

Dated this 2nd day of November, 2012.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge